



# ***COMMONWEALTH of VIRGINIA***

## **DEPARTMENT OF INFORMATION TECHNOLOGY**

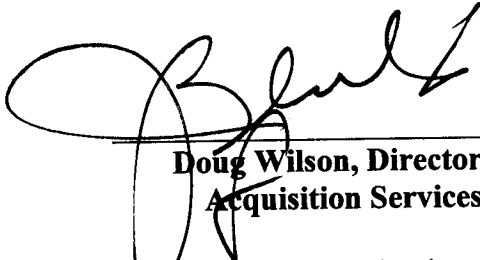
### **REQUEST FOR PROPOSALS**

-for-

### **Virtual Private Network and Authentication Solution**

### **RFP 2003-025**

<b>Issued</b>	<b>6-26-2003</b>
<b>Due</b>	<b>7-18-2003</b>



**Doug Wilson, Director  
Acquisition Services**

Department of Information Technology  
110 S. 7<sup>th</sup> Street  
Richmond, Virginia 23219  
Voice: 804.371.5900  
Fax: 804.371.5969

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## **SECTION 1: ADMINISTRATIVE REQUIREMENTS**

### **1.0 Executive Summary:**

#### **RFP # 2003-025 – Virtual Private Network (VPN) & Authentication Solution**

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<b>RFP Issue Date:</b>	<b>6-26-2003</b>
<b>Written inquiries must be received by:</b>	<b>7-09-2003</b>
<b>Proposals Due:</b>	<b>7-18-2003</b>
<b>Mandatory Pre-Proposal Conference:</b>	<b>None</b>

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**Purpose:** Acquisition of Virtual Private Network and Authentication Solution for the Virginia Department of Health

**RFP 2003-025 is a Hardware, Software and Services Contract(s)** that will provide the Virginia Department of Health (DOH) with VPN & Authentication software, necessary hardware, and related services needed to assist with the implementation and access management of agency LAN systems.

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<b>Contract Term:</b>	<b>4 Years*</b> *1 yr. Warranty, 1 yr. Maintenance, (plus two (2) optional additional 1 yr. Maintenance periods)
<b>Products:</b>	<b>Hardware and Software</b>
<b>Services:</b>	<b>Installation, Training, Consulting, Support and Maintenance</b>
<b>Principle Period of Maintenance (PPM):</b>	<b>24 x 7 x 365</b>
<b>Response Time:</b>	<b>2 hours, on-site</b>
<b>Payment Method(s):</b>	<b>Initial purchase</b> <b>Monthly maintenance payments, in arrears</b>
<b>ASD Website:</b>	<u><a href="http://asd.state.va.us">http://asd.state.va.us</a></u>

## 1.1 Purpose:

The purpose of this Request for Proposals (RFP) is to solicit proposals from qualified firms in order to establish a contract through competitive negotiation for a solution to provide software, hardware and related services for a Virtual Private Network (VPN) and User Authentication solution for the Virginia Department of Health (DOH).

The selected solution must provide IPSec-standard encryption to data communications between remote users and the DOH internal network, and between remote networks and the DOH internal network. The selected solution must authenticate external users, and restrict data communications such that only users given privilege to any given internal resource may communicate with that resource. The selected solution must also validate application protocols utilized in data communications.

The selected solution will provide the best overall combination of functionality, security, scalability, flexibility, and compatibility.

Products and related services are to be provided from the date of the award for four (4) years, consisting of a one (1) year Warranty Period followed by a one (1) year Maintenance Period, and thereafter with two (2) optional one year maintenance periods, to be renewed at the discretion of the Commonwealth. (Please refer to the Mandatory Terms and Conditions)

## 1.2 Contents of this Request for Proposals and Governing Documents:

This document contains the instructions governing the proposal to be submitted; the format in which proposals are to be submitted, and the material to be submitted therein; project requirements; evaluation criteria; and contractual terms and conditions.

The governing documents for this solicitation shall be only the most recently dated Adobe PDF file(s) as issued and published on the ASD website at: <http://asd.state.va.us>. These files include, but are not limited to, the RFP 2003-025 solicitation document and all appendices, attachments, answers to vendor inquiries, amendments, spreadsheets and other pertinent documents.

## 1.3 Contact Information and Vendor Inquiries:

Vendors may submit written inquiries, questions or requests for clarification. DIT will respond in writing by publishing all vendor inquiries, and a written response to each individual vendor inquiry received on the ASD website at <http://asd.state.va.us>.

**NOTE: A Pre-Proposal Conference will NOT be held.**

It is the vendor's responsibility to inquire about and clarify any requirement of this RFP that is not clearly understood by the vendor. All verbal questions are discouraged. The Commonwealth will not be bound by verbal responses to questions.

All inquiries concerning this RFP must be submitted in writing to: (Mark envelopes, Fax Headings or E-mail Subject line "Questions - RFP 2003-025")

John Tackley  
Commonwealth of Virginia  
Department of Information Technology

110 South Seventh Street – East Lobby Level  
Richmond, Virginia 23219

All written inquiries **must** be received by the Issuing Office on or before the close of business 7/09/2003. Facsimiles are acceptable, at (804) 371-5969, or e-mail to [jtackley@dit.state.va.us](mailto:jtackley@dit.state.va.us). No further written inquiries will be accepted after that date.

#### 1.4 Closing Date and Time:

The original hard-copy proposal (both Technical and Cost) and seven (7) copies of the technical proposal on CD-ROM **must** be submitted under separate cover and **must** contain the full name and address of every company bearing an interest in the proposal. The original technical proposal and cost proposal **must** be signed by the vendor's contractually binding authority (**only one copy of the cost proposal is required**). The cost proposal **must** be submitted in a separate clearly marked and sealed package. All proposals **must** be received not later than 4:00 p.m. local time 7/18/2003.

#### 1.5 Acquisition Services Division Web Site:

The Acquisition Services Division (ASD) of the Department of Information Technology (DIT) maintains a web site with a URL of <http://asd.state.va.us>. This web site provides information about ASD and acquisitions conducted by ASD for Information Technology related items. Vendors are invited to check this site regularly. The original document, plus all changes or amendments will be found on this web site.

#### 1.6 Rules Regarding Late Proposals and Modifications:

No proposal or modifications to a proposal will be accepted after the closing date and time. Vendors may use any means of delivery but it is the responsibility of the vendor to allow adequate time for delivery to the appropriate office. Proposals and modifications received after closing will be returned unopened.

#### 1.7 News Releases:

No public disclosure or news release pertaining to this procurement **shall** be made without prior written approval of the Issuing Office. **FAILURE TO COMPLY WITH THIS PROVISION MAY RESULT IN THE PROPOSER BEING DISQUALIFIED.**

#### 1.8 Registered Vendors:

PROPOSALS WILL NOT RESULT IN AWARD IF THE VENDOR IS NOT REGISTERED WITH THE DEPARTMENT OF INFORMATION TECHNOLOGY.

A completed registration form **must** be on file or received by DIT (Acquisition Services Division) not later than award date. Call (804) 371-5900 to request a registration form. Vendors may also download a Vendor Application form from ASD's web site with a URL of <http://asd.state.va.us> if you need assistance, call (804) 371-5990.

## 1.9 Rejection of Proposals:

The Commonwealth of Virginia reserves the right to reject any and all proposals, in whole or in part, received in response to this request. DIT **shall** not cancel a Request for Proposals or reject any proposal solely to avoid awarding a contract to a particular responsive and responsible Offeror. In addition, DIT reserves the right to waive informalities and to delete items prior to award. The term Offeror as referenced in this solicitation refers to the firm preparing and submitting a proposal in response to this Request for Proposals (RFP). The term Contractor refers to the firm who when awarded the contract will be responsible for services as required as a result of this solicitation.

## 1.10 Procurement Policies and Procedures:

Information Technology and Telecommunications procurement activity conducted by the Commonwealth of Virginia is governed by provisions of the Virginia Public Procurement Act and guided by provisions of the Vendor's Manual, December 1998, Commonwealth of Virginia (As Amended). The provisions of this RFP are intended to conform to applicable policies and procedures contained in the aforementioned MANUAL. In the event that a vendor should perceive a provision of this RFP to be at variance with a provision of the MANUAL, VENDORS ARE DIRECTED TO REGARD THE RFP PROVISION AS PREVAILING.

## 1.11 Cost of Proposals:

The Offeror is responsible for all costs of proposal preparation. The Commonwealth is not liable for any costs incurred by an Offeror in response to this RFP.

## 1.12 Identification of Proposals:

All proposals submitted for consideration **shall** be clearly marked on the outside cover of all envelopes, boxes or packages:

From: Name of Vendor  
Street or P.O. Box Number  
City, State, Zip Code  
Due Date: 11/30/2001 Time: NLT 4:00 p.m. (Local time)  
RFP Number 2003-025

Note: The technical and cost proposals **must** be submitted in separate, sealed packages with the appropriate label, i.e., "Technical Proposal" or "Cost Proposal".

## 1.13 Definition of "Mandatory" and "Desirable":

### 1.13.1 Mandatory:

The use of "shall", "must", or "will" in this RFP or its' official amendments indicates a requirement or condition that is mandatory (mandatory requirement), and **shall** not be construed in any way as allowing deviation from any requirement. Deviation from mandatory requirements will not be accepted by the Commonwealth. The Commonwealth of Virginia reserves the right to reject any and all proposals and to waive minor informalities. All mandatory requirements **must** be met in order for

any proposal to be considered. The vendor **must** respond to the mandates identifying if he or she can fulfill the requirements identified herein and how the vendor proposes to meet the requirements. Substantiation to responses **must** be provided. The Commonwealth has established guidelines for offerors governing the interpretation of RFP requirements.

FAILURE TO AGREE TO THE MANDATORY TERMS AND CONDITIONS SHALL RENDER THE VENDOR'S PROPOSAL NON-RESPONSIVE AND THE VENDOR SHALL NOT BE CONSIDERED FURTHER. THE VENDOR SHALL INCLUDE IN THE PROPOSAL A STATEMENT CONFIRMING ACCEPTANCE OF THE MANDATORY TERMS AND CONDITIONS VERBATIM.

#### 1.13.2 Desirable:

There are a number of elements that are considered desirable by the Commonwealth. Those products and services which will enhance the overall system and performance and are not considered mandatory will be considered "desirable". Words such as "desirable", "should", "is requested", "is urged to", are important to the user in selecting a vendor, but in order to permit vendors to meet the requirements creatively, they are not specified as strictly mandatory requirements. Vendor responses to desirable elements should meet stated goals, objectives, or enhance performance, and identify how the proposed element meets the stated requirement. However, failure of a proposal to meet desirable requirements is not disqualifying. Vendors should document the extent to which they can meet the desirable or optional services. Proposals that provide more of the desirable features or that meet them more effectively than another proposal will be given stronger consideration in vendor selection.

#### 1.14 Oral Presentation:

An oral presentation by the vendor may be required. If an oral presentation is required to clarify or substantiate any area contained in the vendor's response, the Issuing Office will schedule a time and place for the presentation. This provides an opportunity for the Offeror to clarify or elaborate on the proposal. This is a fact finding and explanation session only and normally does not include negotiation. The response **must** be complete in all respects, as oral presentations and demonstrations MAY or MAY NOT be scheduled. All costs incurred by vendor to provide oral presentations are the responsibility of the vendor.

#### 1.15 Proprietary Information:

SECTION 11-52(d), Virginia Public Procurement Act, states "Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction **shall** not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder, offeror, or contractor **must** invoke the protections of this section prior to or upon submission of the data or other materials, and **must** identify the data or other materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted **must** be identified by some distinct method such as highlighting or underlining and **must** indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. **The classification of an entire bid or proposal document, line item prices and/or total bid or proposal prices as proprietary or trade secrets is not acceptable and may result in rejection of the bid or proposal.**



The vendor **must** provide "Appendix C" which provides a list of all pages in the proposal that contains proprietary information along with the reason. Only pages contained in that list will be treated as proprietary. The vendor may as an option, provide a fully redacted copy of their proposal to be utilized in those circumstances where public proposal review is needed.

**FAILURE TO MARK THE DATA OR OTHER MATERIALS AS STATED WILL RESULT IN THE DATA OR OTHER MATERIALS BEING RELEASED TO VENDORS OR THE PUBLIC AS PROVIDED IN THE VIRGINIA FREEDOM OF INFORMATION ACT.**

#### 1.16 Proposal Format:

*1 – Hard/Paper Copy  
7 – CD-ROM Discs*

The complete proposal shall be submitted both on CD-ROM and in hard-copy/paper format. The CD-ROM files must be readable by MS Word or MS Excel software.

Seven (7) CD-ROM discs must be submitted (an original disc and six (6) copies). Additionally, one (1) single complete hard paper copy of both the Technical and Cost Proposals shall be submitted.

Hard-copy/paper format must exactly match CD-ROM files (with the exception of original signatures).

***Technical and Cost proposals (whether on CD-ROM or paper) shall always be submitted in separate sealed envelopes, or other containers, clearly marked as to the contents.***

The proposals should be organized in the exact order in which the requirements are presented in the RFP and should be page numbered. The proposal should contain a table of contents which cross references the RFP requirement and the specific page of the response in your proposal. Each paragraph in the proposal **must** correspond to and reference the paragraph number in the corresponding section of the RFP. The vendor **must** repeat the paragraph number, sub-letter, and text of the requirement as it is presented in the RFP. If a response covers more than one page, the vendor **must** repeat the paragraph number and sub-letter at the top of the subsequent page.

Proposals that are not organized in this manner may be eliminated from consideration for failing to specifically address the technical and contractual requirements. Vendors **must** document that they can meet mandatory requirement of the RFP and should document the extent to which they can meet the desirable or optional features.

Vendors are strongly encouraged to adhere to the following general instructions in order to bring clarity and order to the proposal preparation and subsequent evaluation process:

- a. The response should be complete and comprehensive, with a corresponding emphasis on being concise and clear.
- b. All proposed items should be identified as to whether they are in response to mandatory or desirable requirements. Each response to a mandatory item in the proposal **must** contain, as a minimum, a statement such as "XYZ Fully Complies".
- c. Regardless of whether or not a desirable is being proposed, all desirables should be identified as to their availability and associated costs (**to appear in the "Cost Proposal" ONLY**).
- d. Vendors must submit proposals on a CD-ROM.

- e. For the hard copy, elaborate bindings or literature are not necessary, but all documents should be clear and legible. Poor quality copies of materials may be rejected.

**1.17 Multiple Proposals:**

A vendor may submit one or more proposals. All proposals **must** be complete and **must** comply with all of the instructions of this RFP.

**1.18 Submission of Cost Information:**

All cost information **must** be signed, sealed and provided in a separate envelope. No cost information **shall** be included in the technical proposal.

The offeror's cost proposal **must** include Freight On Board (FOB) shipping to the destination indicated, and the Industrial Funding Adjustment (IFA).

The vendor **must** be willing and able to successfully deliver all products and services proposed and to complete the project on a firm fixed-price basis. If the vendor desires to propose additional products and/or services that it believes would benefit the COV (but are not required to successfully complete the project as proposed), such items should be included and clearly identified as optional.

**1.19 Nondisclosure:**

All proposal information will be treated as confidential and will not be disclosed except as required for the purpose of evaluation. In accordance with the Virginia Public Procurement Act (VPPA) Section 11-52C1, proposals will be available for public inspection after negotiations and selection.

**1.20 Sub-Contractor Identification:**

The primary (prime) vendor **must** identify a contact person, by name, organization and telephone number, who will be responsible for coordinating the efforts and personnel of all parties and/or subcontractors involved in the response. This includes, but is not limited to, responses to requests for interviews, oral presentations and clarifications of responses to the RFP.

**1.21 Evaluation Criteria:**

All proposals received will be reviewed and evaluated by the Selection Committee using the following criteria, the order of which is not indicative of their weight or importance:

- a. Degree to which proposal meets mandatory features, functions and support/services.
- b. Degree to which proposal meets desirable features, functions and support/services.
- c. Offeror's references
- d. Offeror's, qualifications and experience
- e. Offeror's references with respect to other similar installations
- f. Participation of Small, Women-Owned and Minority-Owned Businesses
- g. Price

## 1.22 Selection Process:

Subject to approval by the Review Committee, proposals are evaluated on the basis of the criteria enumerated in the RFP and are scored in accordance with a weighting scheme established and approved prior to the opening of any proposals.

The Commonwealth is not required to furnish a statement of the reasons why a particular proposal was not the most advantageous. It is the intent of the Commonwealth to make one (1) award. Should the Issuing Office determine in writing, and in its sole discretion, that only one vendor is clearly more highly qualified than others under consideration, a contract may be negotiated and awarded to that vendor.

The proposal evaluation process involves, first, the review by a Selection Committee of all proposals received in response to the RFP to ensure that each proposal meets the mandatory requirements and the mandatory terms and conditions identified in Section 6 of this RFP. Proposals which have been determined by the Selection Committee not to have met one or more mandatory requirements or mandatory terms and conditions, and cannot be brought into compliance, are excluded from any further consideration.

The second step in the evaluation of proposals involves each Selection Committee member evaluating the vendor's technical proposal and assigning a score to each of the selection criteria based on his/her personal understanding or interpretation of each of the proposed items. It will be decided at the beginning of the process how scores are to be assigned to each of the criteria (such as from zero to four in half point increments, with two (2) as average). The full Selection Committee will then meet to discuss the scoring. Members may change their scoring, if they desire. Preliminary scoring may also be changed, by committee members, after oral presentations or demonstrations by the vendor. Technical scores are totaled and multiplied by the weights assigned to arrive at a cumulative score and numerical ranking. At this point, vendors may be offered the opportunity to submit revised cost proposals.

In the final step, the vendor's cost proposal will be opened by the Selection Committee. The proposed costs will be evaluated using the formula below. The technical and cost proposals will be summed to provide a ranked list of vendors. Unless there is deemed to be one vendor that is clearly more qualified, two or more vendors deemed to be fully qualified and having the highest evaluation scores are then selected for negotiations. Vendors may be requested to provide revised pricing during this phase. The lowest price received is the basis for the application of the cost scoring formula.

The cost scoring formula for evaluating proposals is:

$$\text{Cost factor} = (LV/V)$$

Where: LV = lowest cost vendor (\$)

V = vendor being evaluated (\$)

Cost score = cost factor x points available for cost

### **1.23 Site Visits**

The Commonwealth may require the vendor to arrange a visit by the selection committee to a customer site with equipment/software identical to or nearly identical to that proposed. The site should have a volume of activity similar to DOH. The site should be one of the vendor's listed references.

For planning purposes, the vendor should arrange for, and provide several dates, close to the closing date of the RFP, for the selection committee's consideration as possible visit dates. The group would consist of no more than six (6) individuals. Should the sites be outside of the Richmond area, the Commonwealth will pay for all travel, meals and lodging. The vendor may be asked to assist with arrangements to insure coordination with vendor personnel traveling to the site.

### **1.24 Review Phase:**

A Review Committee, consisting of Commonwealth employees who do not have a direct involvement in the selection, will review the selection process and major decisions such as vendor disqualification, to ensure that the selection was fair and unbiased.

### **1.25 Contract Negotiations:**

After selection for negotiation by the Selection Committee, DIT will negotiate with the selected Offeror(s) to establish a mutually agreeable contract. The Commonwealth reserves the right to add terms and conditions during negotiations that are mutually agreed to by both parties, which might be required for any specific additional service(s) contained in the Offeror's response to the Solicitation. At any time during negotiations, should the parties fail to agree upon a contract, the Commonwealth, at its sole discretion, may cancel negotiations with the selected Offeror and proceed to the next acceptable Offeror.

### **1.26 Post Award Review:**

Following selection of the winning vendor(s) and formal notification, the Director, Acquisition Services Division, or his designated representative, will review the selection with other vendors on an appointment basis only. Vendors desiring to review the selection process **must** do so within 30 days after Notification of Intent to Award, or other notification as deemed applicable by DIT, is posted.

### **1.27 Participation by Small Businesses, and Businesses Owned by Women and Minorities.**

It is the policy of the Commonwealth of Virginia to contribute to the establishment, preservation and strengthening of small businesses and businesses owned by women and minorities and to encourage their participation in State procurement activities. The Commonwealth encourages contractors to provide for the participation of small businesses and businesses owned by women and minorities through partnerships, joint ventures, subcontracts, and other contractual opportunities. Submission of a report of past efforts to utilize the goods and services of such businesses and plans for involvement on this contract is required. By submitting a proposal, offerors certify that all information provided in response to this RFP is true and accurate. Failure to provide information required by this RFP will ultimately result in a lower evaluation ranking.

All information requested by this RFP on the ownership, utilization and planned involvement of small businesses, women-owned businesses and minority-owned businesses **must** be submitted. If an offeror fails to submit all information requested, the purchasing agency may require prompt submission of missing information after receipt of vendor proposals.

Instructions for providing the required information, including definitions, are included as Appendix "A" to this RFP. Forms to assist the offeror in providing the required information are also included as Appendix "A". You are not required to use the forms so long as the minimum information required is provided in the prescribed format.

#### 1.28 Faith-Based Organizations

This public body does not discriminate against faith-based organizations.

#### 1.29 Contractual Binding:

- a. This RFP, the response submitted by the successful contractor, and all amendments and written clarifications, or any portions thereof, may be incorporated into the agreement signed by the successful contractor and the Commonwealth of Virginia. If a proposal contains items or services which are not manufactured, generally supplied, or maintained by the proposing vendor, the vendor will accept full responsibility for the service as if it were the vendor's own. The Commonwealth will contract only with the prime vendor who will be responsible for the performance of and payment to any subcontractor(s).
- b. Price quotations and other time dependent information contained in proposals **shall** be valid for a minimum of 120 days following the closing date.
- c. SECTION 6 of this solicitation, entitled "Mandatory Terms and Conditions" contains the mandatory terms and conditions. These terms and conditions will be included verbatim in any agreement executed by the Department of Information Technology. **FAILURE TO AGREE TO THE MANDATORY TERMS AND CONDITIONS SHALL RENDER THE VENDOR'S PROPOSAL NON-RESPONSIVE AND ELIMINATE THE VENDOR FROM FUTURE CONSIDERATION. THE VENDOR SHALL INCLUDE IN THE PROPOSAL A STATEMENT CONFIRMING ACCEPTANCE OF THE MANDATORY TERMS AND CONDITIONS, VERBATIM LISTED IN SECTION 7 OF THIS RFP.**
- d. SECTION 7 of this solicitation, entitled "Desirable Terms and Conditions", if included, contains language the Commonwealth considers highly desirable for inclusion in any contract. The Commonwealth will consider, during negotiation, changes to the wording of these terms and conditions if the vendor proposes alternative language which the Commonwealth feels is in its' best interest to accept.

#### 1.30 IFA

Vendors are advised to read and understand the paragraphs entitled "Contractor's Report of Sales" and "Industrial Funding Adjustment" listed in the attached Terms and Conditions.

## **SECTION 2: GENERAL VENDOR INFORMATION**

### **2.1 General Vendor Information (MANDATORY)**

This section requires information about the vendor's background and experience.

1. Vendor's Operating Organization – Mandatory
  - a) Provide an overview of the operating structure and geographical locations of the firm at the national, regional, and local levels.
2. Company Contact – Mandatory
  - a) Provide the name, title, street address, city, state, zip code, and telephone number of the primary contact person.
3. Corporate Identity – Mandatory
  - a) Provide the identity of any parent corporation.
  - b) Provide the identity of any subsidiaries, if appropriate.
  - c) Provide the identity and qualifications of any subcontractors, if appropriate.
4. Corporate Financial Status – Mandatory
  - a) For publicly held companies, vendors must provide a copy of their firm's (information systems division or corporation only, if consolidated statements are published) audited financial statements from the most recent fiscal year, and the preceding two fiscal years; must provide their Dun and Bradstreet credit rating number, and must provide their Moody's Investment Service Bond Rating and/or Standard & Poors Bond Rating if they have publicly held debt.
  - b) For privately held companies, vendors must provide a copy of audited financial statements for the most recent and the preceding two fiscal years.
  - c) Indicate the percentage of total annual revenue that the proposed product generated for the most recent and the preceding two fiscal years.

### **2.2 Experience and Innovation Information (MANDATORY)**

1. System History – Mandatory
  - a) Give a brief description of the evolution of the proposed software. Include the first installed site and major developments which have occurred.
  - b) Include any innovative approaches and/or solutions offered.
  - c) List any enhancements implemented within the last 12 months.
2. Exposure in the Marketplace – Mandatory
  - a) Discuss the firm's client base and discussion of the products' position in the marketplace. Include a listing of corporate and government users in Virginia. This must include information about the general client base.
3. Experience in the State or Federal Sector Industry – Mandatory
  - a) Include information about the firm's experience in the state or federal sector, industry and similar institutions with similar projects, including contact info and value of project.

### **2.3 Product Information (MANDATORY)**

1. Compatibility – Mandatory
  - a) Provide a discussion of the compatibility features which would be relevant to an environment such as the one at DOH. (See Section 4: Mandatory Requirements, Background.)
2. Flexibility – Mandatory

- a) Provide a full discussion of the proposed software flexibility features which would be relevant to an evolving information processing environment such as the one at DOH. (See Section 4: Mandatory Requirements, Background.)
3. Long-Term potential – Mandatory
  - a) Provide a full discussion of the proposed software's long-term potential.
  - b) Explain the features which will help prevent an early obsolescence of the software.
  - c) Explain any features which will extend the software's life expectancy in the marketplace.

**2.4 Software Support Information (MANDATORY)**

1. Describe the installation process for the proposed software.
2. Explain how product maintenance is packaged, delivered and applied.
  - a) Can maintenance for all proposed products be ordered as a unit?
  - b) Can maintenance for all the proposed products be installed with a single process?
4. How will the vendor assure that the proposed solution will not become obsolete?
5. Describe how support will be provided for migration to new releases.
  - a) Describe the migration support provided for previous release upgrades.
  - b) Provide copy of previous migration support documentation if available.

**2.5 Description of Proposed Products (MANDATORY)**

1. Provide an overview of the features and capabilities of the software components being proposed and their relationship to one another.

**2.6 Customer Input to Development Effort (MANDATORY)**

1. Explain how customer opinion about the software is used in the development of improvements.
2. Explain how these improvements are implemented in existing installations.
3. If a user group or forum exists, provide the name, address, and telephone number of the group's contact person.

**2.7 Differentiation From Other Vendors (MANDATORY)**

1. Identify those overall and application-specific features and capabilities, which the firm feels differentiates it from its competition.

**2.8 Client References (MANDATORY)**

1. Identify at least one (1) user site, which is currently operating the proposed software in an environment similar in size and similar in profile to DOH. (See Section 4, Background)
  - a) This information must include the name and location of the site and identify a contact person and telephone number.
  - b) Use the Vendor Client Reference Form, Attachment "D".

**2.9 Client References (DESIRABLE)**

1. Identify two (2) additional user sites, which are currently operating the proposed software in an environment similar in size and similar in profile to DOH. (See Section 4: Mandatory Requirements, Background.)
  - a) This information must include the name and location of the site and identify a contact person and telephone number.
  - b) Use the Vendor Client Reference Form, Attachment "D".

### **SECTION 3: GENERAL**

#### **3.1 General Pricing Information**

COV contract purchase price for products and services awarded as a result of this solicitation shall be derived from an Offeror's fixed discount percentage from a publicly available price list.

#### **3.2 Definition of Publicly Available Price List (The Index Price Document)**

A Publicly Available Price List is defined as a price list (catalog, contract or other published document) or a website URL, previously published for the general public (or for another entity, such as the Federal Government) for the purpose of providing product or services pricing. An example would be the Manufacturer's Suggested Retail Price List (MSRP), GSA Contract Pricing, or a Product Catalog. A website URL where one of the above documents can be viewed is preferred. Proof of the referenced price list's existence, prior to the release date of this RFP, may be requested.

#### **3.3 Contract Price Formula (IP – CD = CP)**

The COV Contract Price (CP) will be calculated by subtracting a fixed Contract Discount (CD) from an Index Price (IP) found on an Index Price Document referenced by the Offeror. An example of this formula is:  $\$1000 - 20\% = \$800$ , where the Index Price = \$1,000.00, The COV fixed Contract Discount percentage is 20%, and the resulting net Contract Price to the Commonwealth is \$800.00. (The discount may be positive -or- negative.) The referenced publicly available price list, or Index Price Document, **must** be submitted with the proposal *in hard copy, as well as on the CD-ROM*.

Index Price adjustments will be allowed to occur upward or downward. Index Price adjustments may occur only when the above referenced Index Price Document changes for a contract item. The Contractor **must** notify DIT of all price list changes at a mutually agreed time interval. Adjustments to the fixed contract discount rates are allowed only in accordance with Terms and Conditions of this contract, or when a cost savings to the Commonwealth will occur and are mutually agreed upon by the Contractor and DIT.

Prices and/or rates for services proposed by the Offeror which are not contained in the Index Price Document may only be adjusted after the first two years, and annually thereafter. Increases for such items **must** be submitted by the Contractor to the Contract Manager, DIT, and be mutually agreed upon by the Contractor and DIT.

The vendor, from time to time, may offer "Sales" and "Authorized Users" may avail themselves of said pricing under the contract. Such "Sales" **must** have a duration of not less than 30 days and DIT **must** be notified, in writing, prior to the commencement of the "Sale" in order for contract purchases to be valid.

#### **3.4 Substitutions and/or Additions of Contract Items**

The Contractor may add, delete, substitute or replace contract items from time to time. The Index Price Document, and periodic iterations thereof, shall always be the basis for calculating the COV contract price at the time an order is placed, in accordance with the Contract Price Formula.

Any other request for substitution, replacement or addition of an item **must** be submitted, in writing, by the Contractor to the Contracts Manager, DIT. All products or services added to the contract shall be mutually agreeable between COV and the Contractor.



**3.5 Acceptance**

See Terms and Conditions as defined herein.

## **SECTION 4: MANDATORY REQUIREMENTS**

### **4.1 Background**

The Virginia Department of Health exchanges data communications with many other organizations, State agencies, and remote users.

The Virginia Department of Health deals with highly sensitive data including patient records, and is subject to Federal HIPAA regulations.

Data communications across external networks exposes this data to extreme risk, such as interception, manipulation, or fabrication.

Data communications across external networks also exposes the Virginia Department of Health internal network to extreme risk, such as unauthenticated users attempting to access internal resources, authenticated users attempting to access resources to which they do not have privilege, or third parties attempting to access internal resources through an authenticated user.

The Virginia Department of Health assumes that remote client software cannot be trusted to enforce access policy, and therefore enforcement of access policy is an integral function of a VPN Gateway.

Current need is for access to the Virginia Department of Health internal network for 800 remote users and 3 external organizations. However, utilization of enterprise applications by remote users and the exchange of data with external organizations will increase dramatically beyond this initial scope.

Current data communications need includes the use of the HTTP, HTTPS, SQLnet, SSH, and H.323 application protocols. However, data communications needs will expand and diversify beyond this initial scope. Furthermore, data communications needs of such offices as Bioterrorism and the Office of Emergency Preparedness and Response may change very quickly in cases of emergency.

External organizations with which the Virginia Department of Health exchanges data communications utilize VPN gateways and clients from disparate vendors.

To address these needs and concerns, the Virginia Department of Health envisions a scalable Virtual Private Network solution, which provides access management and IPSec standards-compatible encryption to any data communications between the Virginia Department of Health internal network and remote users and networks. This vision of access management includes the use of two-factor authentication for remote users, the restriction of authenticated users to communicate with only those resources to which they have been given privilege, and the inspection and validation of application protocols used in these communications. We envision initial installation of solution components listed in 4.2.1 through 4.2.5, but would like contract pricing for everything vendor has available included, both now and future offerings.

### **4.2 Statement of Needs**

#### **4.2.1 Solution Components**

##### **4.2.1.1.VPN Gateway**

##### **4.2.1.2.Installs onto local servers**

- 4.2.1.3.Challenges remote users for authentication
- 4.2.1.4.Consults Authentication Server for authorization and privileges
- 4.2.1.5.Provides IP-Sec standards-compliant encryption and tunneling
- 4.2.1.6.Provides packet filtering, firewalling, access-lists, application protocol validation
- 4.2.1.7.Restricts access based upon privilege

**4.2.2. VPN Client software**

- 4.2.2.1.Installs onto remote external workstations
- 4.2.2.2.Relays authentication to VPN Gateway
- 4.2.2.3.Provides IP-Sec standards-compliant encryption and tunneling

**4.2.3. Authentication Server**

- 4.2.3.1.Installs onto local servers
- 4.2.3.2.Provides authentication services, including two-factor authentication, to VPN Gateway
- 4.2.3.3.Manages users role-based authorization and access rights to internal resources

**4.2.4. Authenticator Devices**

- 4.2.4.1.Portable hardware-based devices
- 4.2.4.2.Challenges users for a password or personal identifier
- 4.2.4.3.Provides a password

**4.2.5. Desired Contract Offering**

- 4.2.5.1.Contract offering of VPN solution should include the following:
  - 4.2.5.1.1. Licenses for 2 installations of VPN Gateway components
  - 4.2.5.1.2. Licenses for 800 VPN Gateway users
  - 4.2.5.1.3. Licenses for 2 installations of Authentication Server components
  - 4.2.5.1.4. Licenses for 800 user accounts on Authentication Server
  - 4.2.5.1.5. Licenses for 800 installations of VPN Client Software
  - 4.2.5.1.6. Authenticator Devices for 800 users
  - 4.2.5.1.7. Licenses for 2 installations of any components necessary for administration of Authenticator Devices
  - 4.2.5.1.8. Training on VPN Gateway configuration and administration for 3 administrators
  - 4.2.5.1.9. Training on Authentication Server configuration and administration for 2 administrators
  - 4.2.5.1.10. Maintenance and technical support for all components
  - 4.2.5.1.11. Periodic upgrades of all software
  - 4.2.5.1.12. Terms for purchase of additional quantities of any component or services

4.2.5.1.13. Except where otherwise expressly provided, "delivery" includes, without limitation, shipping FOB destination, unpacking and preparation of Product for use, as well as the provision of Hardware and/or Software Support Services during the Commonwealth's installation activity. Contractor's Delivery responsibility shall not be complete until the Commonwealth completes the installation of all supplied Products to a state where they are ready for acceptance testing. If the Commonwealth, at its sole discretion determines contractor's technical staff are needed to successfully complete Delivery, the appropriate type and number of contractor's technical staff shall be provided, on-site at no additional cost, for as long as is needed to effect successful Delivery, or as otherwise mutually agreed to. Should the Commonwealth not affect a complete installation, the Products will be returned at the Contractor's expense and the Commonwealth shall be relieved of all obligations.

#### **4.2.6. Functionality Requirements**

- 4.2.6.1. Solution shall manage and secure data communications between external remote users and internal local resources
  - 4.2.6.1.1. Verify the identities of external remote users through the use of strong two-factor authentication
  - 4.2.6.1.2. Apply role-based authorization of external remote users access rights to designated internal local resources
  - 4.2.6.1.3. Protect internal local resources from unauthorized access by external remote users though the use of packet filtering, firewalling, access-lists, and/or protocol validation
  - 4.2.6.1.4. Ensure the privacy, integrity, and authenticity of data communications between external remote users and internal local resources through the use of IP-Sec standards-compliant encryption and tunneling
- 4.2.6.2. Solution shall manage and secure data communications between internal local users and resources and external remote resources
  - 4.2.6.2.1. Protect internal local resources from unauthorized access from external remote resources through the use of packet filtering, firewalling, access-lists, and/or protocol validation
  - 4.2.6.2.2. Ensure the privacy, integrity, and authenticity of data communications between internal local resources and external remote resources through the use of IP-Sec standards-compliant encryption and tunneling
- 4.2.6.3. Solution shall manage unsecured data communications between external remote users and internal local resources
  - 4.2.6.3.1. Verify the identities of remote users through the use of strong two-factor authentication
  - 4.2.6.3.2. Apply role-based authorization of remote users access rights to designated resources
  - 4.2.6.3.3. Protect internal local resources from unauthorized access by remote users though

the use of packet filtering, firewalling, access-lists, and/or protocol validation.

**4.2.7. Security Requirements**

- 4.2.7.1. VPN Gateway shall be capable of and utilize IP-Sec standards, including ESP and AH protocols, to provide VPN tunnel functionality.
- 4.2.7.2. All components shall be clean of known security vulnerability exploits.
- 4.2.7.3. Vulnerability history of all components should demonstrate few prior security vulnerabilities.
- 4.2.7.4. Vulnerability history of all components should demonstrate that any discovered security issues were addressed quickly and thoroughly.
- 4.2.7.5. VPN Gateway and underlying operating system platform should be integrated, such that vendor is single source to address any discovered security issues.

**4.2.8. Authentication Requirements**

- 4.2.8.1. Shall provide and utilize two-factor authentication, such that users are authenticated based upon both possession of an authenticator and knowledge of a personal identifier.
- 4.2.8.2. Authenticator Devices shall be portable and rugged, such as to be carried on one's person easily and resist incidental damage.
- 4.2.8.3. Shall be capable of supporting other methods of strong, advanced authentication such as bioinformatics, smart-cards, and public key encryption.

**4.2.9. Authorization Requirements**

- 4.2.9.1. Shall implement role based access management, such that different users and user-groups are granted access to different sets of resources.
- 4.2.9.2. Shall be capable of managing access to individual internal resources beyond simply the establishment of a VPN tunnel.

**4.2.10. Policy Enforcement Requirements**

- 4.2.10.1. Shall enforce policy by filtering and restricting communications between users and resources based upon access and privileges granted to them.
- 4.2.10.2. Shall be capable of applying filtering of communications between external users and resources and internal resources regardless of whether such communication is within a VPN tunnel.
  - 4.2.10.2.1. Such filtering shall include the ability to statefully filter and restrict packets.
  - 4.2.10.2.2. Such filtering should include the ability to validate and restrict application protocols.

**4.2.11. Accounting Requirements**

- 4.2.11.1. Shall provide means of accounting for administrative changes, including administrative account used and detailed configuration changes made.
- 4.2.11.2. Shall provide means of accounting for all data communications, including user accounts, authentication method, resources accessed.
- 4.2.11.3. Shall provide a means to search accounting information, such as to audit users and communications.

4.2.11.4. Shall provide a means to archive and store accounting information internally.

4.2.11.5. Shall provide means of exporting accounting information to an external accounting process.

**4.2.12. Scalability Requirements**

4.2.12.1. Shall be scalable to multiple thousands of simultaneous tunnels and/or connections.

4.2.12.2. Shall be scalable to multiple thousands of unique user accounts and authentication devices.

4.2.12.3. Underlying hardware should be capable of upgrade in order to achieve scalability.

4.2.12.4. Should not rely solely on deployment of additional gateways or servers in order to achieve scalability.

4.2.12.5. Should not limit the number of configurable or enforceable access policies.

**4.2.13. Flexibility Requirements**

4.2.13.1. VPN Gateway shall be capable of tunneling any TCP/IP based protocol and service.

4.2.13.2. VPN Gateway shall be capable of utilizing both Transport and Tunnel IPSec modes simultaneously.

4.2.13.3. VPN Gateway shall be capable of tunneling different connection modes simultaneously, such as connections from VPN Client to VPN Gateway and connections from VPN Gateway to other organizations.

4.2.13.4. VPN Gateway shall be capable of providing access management and policy enforcement to VPN tunnels and non-VPN communications simultaneously.

4.2.13.5. Shall be capable of applying differing access policy to different users simultaneously.

4.2.13.6. VPN Gateway shall be capable of enforcing differing access policy to different connections simultaneously.

4.2.13.7. VPN Gateway and VPN Client shall allow, though not require, the use of "Split Tunneling", such as to allow remote users to access resources local to them while providing security and access to internal VDH resources.

4.2.13.8. VPN Gateway and Authentication Server should support installation and operation on underlying hardware other than the vendor's own hardware.

**4.2.14. Compatibility Requirements**

4.2.14.1. VPN Gateway shall be compatible with IP-Sec standards.

4.2.14.1.1. VPN Gateway shall be capable of inter-operation with other standards-compliant VPN Gateways and VPN Clients from other vendors

4.2.14.1.2. VPN Gateway should be capable of such inter-operation without loss of functionality.

4.2.14.1.3. VPN Gateway should be certified under the Version 1.1 Criteria of the ICSA Labs IP-Sec Product Certification Program.

4.2.14.1.4. VPN Gateway should not, if implementing non-standard IP-Sec extensions, break interoperability with other standards-compliant VPN Gateways and VPN Clients from other vendors.

4.2.14.2. VPN Client shall be capable of inter-operation with other standards-compliant VPN Gateways from other vendors without loss of functionality.

4.2.14.2.1. VPN Client should not, if implementing non-standard IP-Sec extensions, break interoperability with other standards-compliant VPN Gateways and VPN Clients from other vendors.

4.2.14.3. VPN Client should offer versions supporting the Windows95, Windows98, WindowsME, Windows2000, WindowsXP, and PalmOS platforms.

4.2.14.3.1. VPN Client should install and operate on supported platforms in such a way as to not interfere with the stability and reliability of the platform.

4.2.14.4. Authentication Server should be capable of providing authentication and authorization services to other network resources as well as VPN Gateway.

#### **4.2.15. Administration Requirements**

4.2.15.1. Shall provide means of encrypted remote administration, such as SSH-enabled command line, SSL-encrypted web pages, or other encrypted administrative interface.

4.2.15.2. Shall provide means of backup and restoration of all VPN Gateway and Authentication Server configuration.

4.2.15.3. Shall provide means of software upgrade in order to access new features and functionality.

4.2.15.4. Shall provide means of software patching in order to address security issues and bug-fixes.

4.2.15.5. Should provide means of "backing out" or uninstalling any upgrade or patch.

4.2.15.6. Shall support multiple accounts with administrative privileges, such that each administrator has their own username and authentication and there is not a single administrative username and authentication.

4.2.15.7. Authentication Server shall provide means of delegating user management administrative tasks which does not require the granting of full administrative privileges.

4.2.15.8. Should provide a method to automatically download the most recent patches.

#### **4.2.16. Prohibited**

4.2.16.1. VPN Gateway shall not, if implementing PPTP, L2F, or L2TP protocols, require their use to provide VPN tunnel functionality.

4.2.16.2. Components shall not be "grey-market" or otherwise unsupportable by its vendor in any way.

4.2.16.3. Solution shall not be a managed VPN service.

**SECTION 5: DESIRABLE REQUIREMENTS**

**5.1. Catalog**

DOH desires that "catalog" style pricing for all available brand family products and services be proposed, for use in placing optional, additional orders throughout the term of the contract.



**SECTION 6: MANDATORY CONTRACTUAL TERMS AND CONDITIONS**

The following terms and conditions are **MANDATORY** and shall be included verbatim in any Contract awarded.

**1. VENDORS MANUAL**

This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at [www.dgs.state.va.us/dps](http://www.dgs.state.va.us/dps) under "Manuals."

**2. APPLICABLE LAWS AND COURTS**

This solicitation and any resulting Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

**3. ANTI-DISCRIMINATION**

**By submitting their bids, bidders certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §2.2-4311 of the Virginia Public Procurement Act. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the Contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that Contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E).**

In every Contract over \$10,000 the provisions in A. and B. below apply:

A. During the performance of this Contract, the Contractor agrees as follows:

- 1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- 2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

B. The Contractor will include the provisions of A. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

#### **4. ETHICS IN PUBLIC CONTRACTING**

By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

#### **5. IMMIGRATION REFORM AND CONTROL ACT OF 1986**

By submitting their proposals, offerors certify that they do not and will not during the performance of this Contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

#### **6. DEBARMENT STATUS**

By submitting their proposals, offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on Contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

#### **7. ANTITRUST**

By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said Contract.

#### **8. MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs AND**

##### **RFPs**

Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.

## 9. PAYMENT

### A. To Prime Contractor:

- 1) Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/Contract. All invoices shall show the state Contract number and/or purchase order number; social security number (for individual Contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- 2) Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- 3) All goods or services provided under this Contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the Contract price, regardless of which public agency is being billed.
- 4) The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- 5) **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges that are not in dispute (*Code of Virginia*, § 2.2-4363).

### B. To Subcontractors:

- 1) A Contractor awarded a Contract under this solicitation is hereby obligated:
  - (a) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the Contract; or
  - (b) To notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.

- (c) The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the Contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (b) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary Contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

## **10. QUALIFICATIONS OF OFFERORS**

The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods and the offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the Contract and to provide the services and/or furnish the goods contemplated therein.

## **11. TESTING AND INSPECTION**

The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

## **12. ASSIGNMENT OF CONTRACT**

A Contract shall not be assignable by the Contractor in whole or in part without the written consent of the Commonwealth.

## **13. MODIFICATION OF CONTRACT**

This contract maybe modified in accordance with §2.2-4309 of the Code of Virginia. Such modifications may only be made by the representatives to do so. No modifications to this contract shall be effective unless it is in writing and signed by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing. For purposes of the contract, the only authorized representative for the Commonwealth shall be the Contracts Manager, VITA or his duly designated alternate, and for the Contractor the person executing this Agreement or his/her duly authorized representative.

Any contract issued on a firm fixed price basis may not be increased more than twenty five percent (25%) or \$50,000.00 whichever is greater, without the approval of the Governor of the Commonwealth of Virginia or his authorized designee.

## 14. TAXES

Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request, and can be obtained online at <http://www.tax.state.va.us/>. Deliveries against this Contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

## 15. USE OF BRAND NAMES

Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict offerors to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The offeror is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the offeror clearly indicates in its proposal that the product offered is an equal product, such proposal will be considered to offer the brand name product referenced in the solicitation.

## 16. TRANSPORTATION AND PACKAGING

By submitting their proposals, all offerors certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

## 17. INSURANCE

By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the Contract, it will have the following insurance coverages at the time the Contract is awarded. For construction Contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the Contractor and any subcontractors will maintain these insurance coverages during the entire term of the Contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

### INSURANCE COVERAGES AND LIMITS REQUIRED:

- a. Worker's Compensation - Statutory requirements and benefits.
2. Employers Liability - \$100,000.

3. Commercial General Liability - \$500,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage, and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The Commonwealth of Virginia must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage.
4. Automobile Liability - \$500,000 - Combined single limit.

## **18. ANNOUNCEMENT OF AWARD**

Upon the award or the announcement of the decision to award a contract over \$30,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA web site ([www.eva.state.va.us](http://www.eva.state.va.us)) for a minimum of 10 days.

## **19. DRUG-FREE WORKPLACE**

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

## **20. NONDISCRIMINATION OF CONTRACTORS**

A bidder, offeror, or Contractor shall not be discriminated against in the solicitation or award of this Contract because of race, religion, color, sex, national origin, age, or disability or against faith-based organizations. If the award of this Contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this Contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

## **21. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION**

The eVA Internet electronic procurement solution, web site portal [www.eva.state.va.us](http://www.eva.state.va.us), streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service, and complete the Ariba Commerce Services Network registration.

Vendors are strongly encouraged to register prior to submitting a bid or offer. Failure to register will result in the bid being found non-responsive and rejected. All vendors must register in both the eVA and the Ariba Commerce Services Network Vendor Registration Systems.

a. eVA Basic Vendor Registration Service: \$25 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, and electronic bidding, as they become available.

b. eVA Premium Vendor Registration Service: \$200 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments, and ability to research historical procurement data, as they become available.

Effective until July 1, 2003, the Commonwealth will direct AMS not to invoice for the 1% transaction fee for orders issued during the period July 1, 2002, through June 30, 2003, to allow additional time for vendors to become electronically enabled. AMS will continue to invoice for transaction fees accrued prior to July 1, 2002. To enable vendors to analyze the future impact of transaction fees, AMS will issue "no pay" invoices for transaction fees that would normally accrue during the period of July 1, 2002, through June 30, 2003. For contracts that extend beyond June 30, 2003, contractors may request price adjustments to incorporate the eVA transaction fee, as provided in the Price Escalation/De-escalation clause in the Special Terms and Conditions of the contract.

c. Ariba Commerce Services Network Registration. The Ariba Commerce Services Network (ACSN) registration is required and provides the tool used to transmit information electronically between state agencies and vendors. There is no additional fee for this service.

## **22. BREACH**

The Contractor shall be deemed in breach of this Agreement if the Contractor (a) fails to make any Product or Service ready for acceptance testing by the specified delivery date; (b) repeatedly fails to respond to requests for maintenance or other required service within the time limits set forth in this Agreement; (c) fails to comply with any other term of this Agreement and fails to cure such noncompliance within ten days (or such greater period as is acceptable to the Commonwealth) following Contractor's receipt of a Show Cause Notice identifying such noncompliance; or (d) fails to provide a written response to the Commonwealth's Show Cause Notice within ten days after receiving same.

The Contractor shall not be in breach of this Agreement if its default was due to causes beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its

subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in either its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

In the event of breach, in addition to any other remedies provided by law, the Commonwealth may cancel its obligations with respect to any or all unaccepted Products or Services. All costs for deinstallation and return of Products shall be borne by the Contractor. In no event shall any failure by the Commonwealth to exercise any remedy available to it be construed as a waiver of or consent to any breach.

### 23. NON-APPROPRIATION

**All funds for payment of equipment, software or services ordered under this Contract are subject to the availability of legislative appropriation for this purpose. In the event of non-appropriation of funds by the Legislature for the items under this Contract, the Commonwealth will terminate this Contract for those goods or services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed.**

If any purchases are to be supported by federal funding, and such funding is not made available, the Commonwealth may terminate this Contract for goods or services dependent on such federal funds without further obligation.

### 24. CONTRACTUAL RECORDS

The Contractor shall make all Contractual books and records and other documents relating to matters under this Agreement available to the Commonwealth and its designated agents for purposes of audit and examination for a period of five years after final payment.

Contractual records include, but are not limited to, this Agreement and all executed Orders, Attachments, modifications, invoices, and correspondence between the parties to this Agreement.

### 25. PRIME CONTRACTOR RESPONSIBILITY

If the Contractor's proposal includes any goods or services to be supplied by another party, the Contractor agrees as follows:

a. The Contractor shall act as prime Contractor for the procurement and maintenance of the entire proposed configuration and shall be the sole point of contact with regard to all obligations under this Agreement.

b. The Contractor hereby represents and warrants that the Contractor has made such other party aware of the proposed use and disposition of the other party's product or services, and that such other party has agreed in writing that it has no objection thereto.

### 26. PATENT/COPYRIGHT PROTECTION



Contractor, at its own expense, shall defend any suit brought against the Commonwealth for the infringement of patents, copyrights or trade secrets enforceable in the United States if the claim of infringement is alleged to relate to or arise from the Contractor's or Commonwealth's use of any equipment, software, materials or information prepared, developed or delivered in connection with performance of this Agreement. In such suit, Contractor shall indemnify the Commonwealth, its agents, officers and employees for any loss, liability or expense incurred as a result of such suit.

The purchasing agency shall notify the Contractor of such suit within a reasonable time after learning of it and shall give the Contractor the full right and opportunity to conduct the defense of the suit, subject however to the requirements of Section 2.2-510 and Section 2.2-514 of the Code of Virginia or any successor statute. If principles of governmental or public law are involved, the Commonwealth may, at its option and expense, participate in the defense of the suit.

The Contractor shall not be required to indemnify the Commonwealth for liability arising solely out of the Commonwealth's own specifications or design or solely from the combination of equipment or software furnished hereunder with any equipment or software not supplied by the Contractor.

If, any Product or Service becomes, or in the Contractor's opinion, is likely to become, the subject of a claim of infringement, Contractor may, at its option, provide noninfringing substitutes that are satisfactory to the Commonwealth, or at Contractor's option and expense, may obtain the right for the Commonwealth to continue the use of such Product or Service.

If the use of such equipment or software by the Commonwealth is prevented by permanent injunction or by Contractor's failure to procure the right for the Commonwealth to continue using the software, the Contractor agrees to take back the infringing equipment, software, materials or information and refund the total amount the Commonwealth has paid Contractor under this Agreement, less one half (1/2%) percent of the total paid for each month of use by the Commonwealth. This obligation is in addition to the obligations cited in the first four subparagraphs above of paragraph (#)\_\_\_\_\_.

## 27. CONTRACTUAL DISPUTES

In accordance with Section 2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the purchasing agency no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to such agency at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The purchasing agency shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

The Contractor may not invoke any available administrative procedure under Section 2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that agency fails to render its decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Section 2.2-4364, Code of Virginia or the administrative procedure authorized by Section 2.2-4365, Code of Virginia.

The Department of Information Technology, its officers, agents and employees, including, without limitation, the Contracts Manager, are executing this Agreement and any Orders issued hereunder, solely in its or their statutory and regulatory capacities as agent for the Commonwealth agency purchasing and

receiving the goods or services identified in Attachment "A" to this Agreement or on the subsequent Order in question and need not be joined as a party to any dispute that may arise thereunder.

In the event of any breach by the Commonwealth, Contractor's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Contractor's remedies include the right to terminate any license or support services hereunder.

## 28. LIMITATION OF LIABILITY

To the maximum extent permitted by applicable law, the Contractor will not be liable under this Contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this Contract. This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the Contractor; or (c) circumstances where the Contract expressly provides a right to damages, indemnification or reimbursement.

## 29. PERIODIC PROGRESS REPORTS/INVOICES

For Contracts requiring the submission of periodic Contract performance progress reports or program status reports, the offeror will include a section on involvement of small businesses and businesses owned by women and minorities. This section will specify the actual dollars Contracted to-date with such businesses, actual dollars expended to-date with such businesses and the total dollars planned to be Contracted for with such businesses on this Contract. This information shall be provided separately for small businesses, minority-owned businesses and women-owned businesses.

If the Contract does not require the submission of periodic progress reports, the offeror will provide the above required information on actual involvement of small businesses and businesses owned by minorities and women as part of their periodic invoices.

## 30. FINAL ACTUAL INVOLVEMENT REPORT

The Contractor will submit, prior to completion or at completion of the Contract and subject to final payment, a report on the actual dollars spent with small businesses and businesses owned by women and minorities during the performance of the Contract. At a minimum, this report shall include for each firm Contracted with and for each such business class (i.e., small, minority-owned, women-owned) the total actual dollars spent on this Contract, the planned involvement of the firm and business class as specified in the proposal, and the actual percent of the total estimated Contract value. A suggested format is as follows:

FIRM NAME				
ADDRESS AND PHONE NUMBER	TYPE GOODS/ SERVICES	ACTUAL DOLLARS	PLANNED DOLLARS	% OF TOTAL CONTRACT
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Totals for Business Class		_____	_____	_____

### **31. BUY OUTS - THIRD PARTY ACQUISITION OF CONTRACTOR'S SOFTWARE**

Contractor shall promptly notify the DIT Contracts Manager in the event that the intellectual property in or business associated with any Product or Service covered by this Agreement is acquired from the Contractor by a third party or in the event the Contractor or substantially all of its assets is acquired by a third party.

The terms and conditions of this Agreement including but not limited to the license rights and related services shall not be affected in such event identified above even if the successor or assignee already has an agreement with the Commonwealth covering products and services of the type covered by this Agreement. The Contractor's responsibilities under this Agreement shall not be released by such acquisition. In addition, prior to any acquisition, Contractor shall obtain for the Commonwealth's benefit the assignee's agreement to fully perform this Agreement.

The successor or assignee, by taking any benefit, including acceptance of payment, under this Agreement ratifies this Agreement.

The failure of any successor or assignee of the Contractor to acknowledge its obligation to adhere to the terms and conditions of this Agreement shall constitute a breach of this Agreement for which the successor or assignee and the original Contractor shall be liable and subject to debarment.

### **32. COMPLIANCE WITH FEDERAL LOBBYING ACT**

A. Contractor shall not, in connection with this Agreement, engage in any activity prohibited by 31 U.S.C.A. Section 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal Contracting and financial transactions") or by the regulations issued from time to time thereunder (together, the "Lobbying Act"), and shall promptly perform all obligations mandated by the Lobbying Act in connection with this Agreement, including, without limitation, obtaining and delivering to the Commonwealth all necessary certifications and disclosures.

B. Contractor is hereby advised that a significant percentage of the funds used to pay Contractor's invoices under this Agreement may be federal funds. Under no circumstances shall any provision of this Agreement be construed as requiring or requesting the Contractor to influence or attempt to influence any person identified in 31 U.S.C.A. Section 1352 (a) (1) in any matter.

C. A representative of Contractor shall sign the certification attached as Attachment "B" and deliver such certification to the Commonwealth simultaneously with the execution and delivery of this Agreement. Contractor shall have the certification signed by a representative with knowledge of the facts and shall fulfill the promises of undertakings set forth in the certification.

### **33. NONVISUAL ACCESS TO TECHNOLOGY**

All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of any State agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this Agreement:

- (i) effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;
- (ii) the Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;
- (iii) nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public: and
- (iv) the technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing nonvisual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (I) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.

Installation of hardware, software, or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration.

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, 2.2-3500 through 2.2-3504 of the Code of Virginia.

#### **34. CONTRACTOR'S REPORT OF SALES**

For all Products ordered by DIT or its successor for any location other than the DIT site, the Contractor must report the dollar value, in U.S. dollars and rounded to the nearest whole dollar within sixty (60) days of payment for goods delivered under this Contract. The dollar value of a sale is the price paid by the user for products and services on a Contract order as recorded by the Contractor. The reported Contract sales value must include the Industrial Funding Adjustment, as delineated in paragraph entitled "Industrial Funding Adjustment". The Contractor shall provide this report in hard copy to the Controller, DIT, and a copy of the report to the Contracts Manager, DIT, both within 60 days after receiving payment. The report must show each individual item and quantities purchased and identify the exact site for which the software will be installed. The report is required to be hard copy.

#### **35. INDUSTRIAL FUNDING ADJUSTMENT**

Currently, the Acquisition Services Division (ASD) of the Department of Information Technology, conducts all procurements for statewide technology products and services. ASD's current policy for the Industrial Funding Adjustment (IFA) is 1), the IFA is and has always been at 2% of the required total sales reported,

and 2), the IFA shall be in every statewide contract for technology products and services with the exception of telecommunications services.

For all Products ordered by DIT or its successor for any location other than the DIT site the Contractor must pay DIT, an Industrial Funding Adjustment (IFA). The Contractor must remit the IFA within 60 days after receiving payment for goods delivered under this Contract. The IFA equals two percent (2%) of the total sales reported. Contractor shall remit the IFA together with a copy of the Contractor's Report of Sales as delineated in the paragraph herein entitled "Contractor's Report of Sales". The IFA reimburses the Commonwealth and defrays the costs for IT procurement and the administration of the subsequent awards. The IFA amount due must be paid by check with identification of "Contract number", "report amounts", and "report period", on either the check stub or other remittance material. The payment shall be made by check made payable to the Controller, DIT.

If the full amount of the IFA is not paid within the 60 calendar days after receiving payment for goods delivered under this Contract, then it shall constitute a Contract debt to the Commonwealth of Virginia, and the State may exercise all rights and remedies available under law. Failure to submit sales reports, falsification of sales reports, and or failure to pay the IFA in a timely manner may result in termination or cancellation of this Contract. Willful failure or refusal to furnish the required reports, falsification of sales reports, or failure to make timely payment of the IFA constitutes sufficient cause for terminating this Contract for default.

It is the intent of the Commonwealth to capture 2% of all sales for any site other than the DIT site, including temporary reduced pricing, fire sales, one time sales, trade ins, promotional items that have been marked down and all other sales under this Agreement.

### **36. RISK OF LOSS**

The Contractor shall have the risk of loss or damage to all equipment until clear and unrestricted title to such equipment is transferred to the Commonwealth.

### **37. AVAILABILITY OF EQUIPMENT AND SOFTWARE**

The Contractor represents and warrants that all Products were formally announced for marketing purposes before execution of this Agreement or, in the case of subsequent Orders, before execution of such Orders.

### **38. TITLE TO EQUIPMENT**

Clear and unrestricted title to all equipment purchased under this Agreement shall pass to the Commonwealth upon payment of the purchase price.

### **39. EQUIPMENT CONDITION**

All equipment to be supplied by Contractor shall be new equipment.

### **40. PRICE PROTECTION**

The Commonwealth shall not pay any costs above those specified in this Agreement or set forth on any Order or Attachment referencing this Agreement.

**41. TERM**

This Agreement shall take effect on the date of its final execution by both parties, and shall continue through delivery, installation, acceptance, one year warranty, one year maintenance, and then at the Commonwealth's sole discretion, may continue for two additional one year periods of additional maintenance services. Should the Commonwealth elect to extend this Agreement for any or both of the 2, 1 year additional periods of maintenance, the Commonwealth will provide a writing to the Contractor at least 30 days prior to the expiration of any then current term. Orders may be written against this Contract during the Term or any extension thereof, as delineated herein.

**42. CREATION OF INTELLECTUAL PROPERTY**

All copyrightable material created pursuant to this Agreement shall be considered work made for hire and shall belong exclusively to the Commonwealth. If the whole or any part of such copyrightable material cannot be deemed work made for hire, the Contractor agrees to assign, and does hereby irrevocably assign, the copyright thereto to the Commonwealth, and shall execute and deliver such further documents as the Commonwealth may reasonably request for the purposes of acknowledging or implementing such assignment.

The Contractor warrants that no individual, other than regular employees of the Contractor or Commonwealth working within the scope of their employment, shall participate in the creation of any copyrightable material to be delivered under this Agreement, unless such individual and his or her employer, if any, have signed an intellectual property agreement satisfactory to the Commonwealth.

The Commonwealth shall have all rights, title and interest in or to any invention reduced to practice through the performance of this Agreement.

The Contractor hereby agrees that, notwithstanding anything else in this Agreement, in the event of any breach of this Agreement by the Commonwealth, the Contractor's remedy shall not include any right to rescind or otherwise revoke or invalidate the provisions of this Section. Similarly, no termination of the Agreement by the Commonwealth shall have the effect of rescinding the provisions of this Section.

**43. INSTALLATION RESPONSIBILITY**

Installation assistance is noted and agreed to by both parties as delineated in Section 4 of RFP 2003-025.

**44. RESERVED**

**45. HARDWARE SPECIFICATION**

Each hardware Product shall conform to all specifications published or provided by the Contractor or manufacturer, including but not limited to, physical characteristics, operating characteristics, space requirements, power requirements, and maintenance.

**46. SOFTWARE SPECIFICATION**

Each software Product shall conform to all specifications published or provided by the Contractor or developer in all respects, including, but not limited to, operating performance, timing characteristics, sizing and compatibility.

#### 47. MANUALS

Contractor shall supply an operations manual for each Product, and in the case of custom-developed deliverables, shall also provide a manual describing the functions, characteristics and operating capabilities that may be expected of such deliverables.

#### 48. LICENSED SOFTWARE

**The Contractor represents and warrants that it is the sole owner of the software/firmware product or, if not the owner, has received all proper authorizations from the owner to license the software/firmware product, and has the full right and power to grant the rights contained in this Contract. Contractor further warrants and represents that the software/firmware product is of original development, and that the package and its use will not violate or infringe upon any patent, copyright, trade secret or other property right of any other person.**

#### 49. TERM OF LICENSE

All licenses granted under this Agreement are purchased on a non-exclusive, irrevocable perpetual license basis and shall commence upon the acceptance of the software Product by the Commonwealth. Notwithstanding the foregoing, the Commonwealth may terminate the license at anytime. All licenses granted to the Commonwealth are for the use of the software Product at the Commonwealth's computing facilities at the sites identified in any executed Attachment or Order referencing this Agreement. This license is perpetual and in no event shall Contractor's remedies for any breach of this Agreement include the right to terminate any license or support services hereunder unless as the result of legal or adjudicated action.

#### 50. CONFIDENTIALITY

Commonwealth agrees that when the Software Product is proprietary to Contractor and has been developed or acquired at Contractor's expense, that it shall hold and use the Software Product in the same manner as it would deal with its own confidential information. Commonwealth shall not knowingly divulge, nor knowingly permit any of its employees, agents, or representatives to divulge, any proprietary information with respect to the Software Product, the technology embodied therein, or any other documentation, models, descriptions, forms, instructions or other proprietary information relating thereto, except as specifically authorized by Contractor, in writing, or as may be required by the laws of the Commonwealth of Virginia.

Commonwealth shall take all reasonable steps necessary or appropriate to insure compliance with this Section by the Commonwealth's employees, agents and representatives, including copying reproducible legends and markings on all physical components of the Software Product.

The Commonwealth's obligation under this Section shall terminate three years after the Commonwealth ceases using the Software Product containing the proprietary information.

#### 51. PRINCIPAL PERIOD OF WARRANTY / MAINTENANCE

The Principal Period of Maintenance (PPM), shall be 24 x 7 x 365. The Commonwealth, by giving fifteen (15) days written notice to the Contractor, may designate different hours or days for the PPM. If this option is exercised, the maintenance charge shall be adjusted up or down by an amount equal to the

difference between the Contractor's then current charges for the existing coverage and newly designated coverage.

## **52. RESPONSE TIME**

During the PPM, the Contractor shall provide all On-site Warranty and Maintenance service within a two (2) hour response time.

## **53. MAINTENANCE OF EQUIPMENT**

In this Agreement "Maintenance" of equipment shall mean: (1) all labor, parts and travel necessary to keep the equipment in good operating condition and preserve its operating efficiency in accordance with its technical specifications; and (2) Any necessary shipment and insurance costs.

Maintenance of equipment shall not include electrical work external to the equipment, the furnishing of supplies, or adding or removing accessories, attachments, or other devices not provided under this Agreement. Maintenance of equipment also shall not include repair of damage resulting from transportation by the Commonwealth between Commonwealth sites or from accident, unless the accident is caused by negligent or intentional acts or omissions of Contractor or its agents.

All Maintenance is provisioned exactly like Warranty and during the PPM as defined herein.

Maintenance costs for Hardware shall be paid monthly in arrears.

## **54. TERM OF WARRANTY / MAINTENANCE**

Beginning on the date of acceptance, Contractor shall furnish twelve months of on-site Warranty for all equipment purchased under this Agreement. The cost of such service is included in the purchase price. Subsequent to the one year On-Site Warranty, the Contractor shall furnish twelve months of On-site Maintenance which is also included in the purchase price.

Upon expiration of the initial twenty-four month period of On-Site Warranty and Maintenance, the Contractor shall provide on-site maintenance of equipment for two additional periods, at the prices denoted herein.

## **55. COMMONWEALTH'S RESPONSIBILITIES DURING MAINTENANCE**

a. During any term of maintenance, Commonwealth personnel shall not perform maintenance or attempt repairs to the equipment except as authorized in writing by the Contractor.

b. The Commonwealth shall permit access to the equipment which is to be maintained, subject to the installation site's security regulations,

c. The Commonwealth may provide storage space for spare parts and working space, including heat, light, ventilation, electric current and outlets, and telephones (for local calls only) for the use of maintenance personnel.



d. The Commonwealth shall maintain the site in accordance with the equipment environmental specifications furnished by the Contractor.

## **56. SOFTWARE WARRANTY**

Contractor warrants the operation of the Software Product identified in this Agreement for a minimum of twelve (12) months (or such longer period as may be agreed to) after installation. Software Products which fail to operate in accordance with the Contractor's Proposal or published specifications will be returned, at Contractor's expense, for replacement. Contractor agrees to replace any non-conforming Software Product within five (5) calendar days after receipt of the returned Software Products. Warranty service shall include, but not necessarily be limited to, detection and correction of errors, updating of all Software Products to operate with all updated or revised versions of the operating systems for which the Software Product is licensed, and provision of enhancements to the Software Product as they are generally made available. Warranty charges shall include unlimited telephonic support and all travel, labor, and documentation necessary to maintain the Products in accordance with Contractor's published specifications.

## **57. SOFTWARE MAINTENANCE AND SOFTWARE SUPPORT**

The Contractor shall provide one year Software Maintenance and support commencing after Software Warranty. Maintenance service shall include, but not necessarily be limited to, detection and correction of errors, updating of all Software Products to operate with all updated or revised versions of the operating systems for which the Software Product is licensed, and provision of enhancements to the Software Product as they are generally made available. Maintenance charges shall include all travel, labor, and documentation. The Commonwealth shall have the option of purchasing two additional one year periods of Software Maintenance and support at the prices herein.

**SECTION 7: DESIRABLE CONTRACTUAL TERMS AND CONDITIONS**

The following terms and conditions are desirable. The Contractor may propose alternative language, but the basic form of the Agreement shall be retained. Contractors are requested to limit their proposed changes, if any, to those of a substantive nature.

**1. SCOPE OF AGREEMENT**

This is an agreement (the "Agreement") between the Commonwealth of Virginia ("Commonwealth" or "DIT" (Department of Information Technology) or "VITA" (Virginia Information Technologies Agency)) and \_\_\_\_\_ (the "Contractor"), a \_\_\_\_\_ corporation having its principal place of business at \_\_\_\_\_ for the purchase of automatic data processing equipment ("hardware" or "equipment") and software (the "Product" or "Products"), along with any required support services (the "Services") pursuant to the Commonwealth's Request For Proposal #2003-025, dated \_\_\_\_\_ (the "RFP") and the Contractor's proposal, dated \_\_\_\_\_, 2003 in response thereto.

The Virginia General Assembly passed legislation that abolishes the Department of Information Technology as of July 1, 2003. All activities and functions of DIT will be consolidated into a new agency that will become the Virginia Information Technologies Agency. Therefore, for the purposes of this Contract ("Agreement") all references to either the Commonwealth, or DIT, or VITA, shall have the same meaning.

**2. INTERPRETATION OF AGREEMENT**

As used in this Agreement, "software" and "software product" shall include all related materials and documentation, whether in machine-readable or printed form.

Headings are for reference purposes only and shall not be considered in construing this Agreement.

The documents comprising this Agreement, and their order of precedence in case of conflict, are: (1) all executed Orders and Attachments referencing this Agreement; (2) this document; (3) the Contractor's proposal if any, if submitted in response to a Request For Proposal ("RFP"); and (4) the Commonwealth's RFP, if any. The foregoing documents represent the complete and final agreement of the parties with respect to the subject matter of this Agreement.

If any term or condition of this Agreement is found to be illegal or unenforceable, it shall be severed, and the validity of the remaining terms and conditions shall not be affected.

Nothing in this Agreement shall be construed as an express or implied waiver of the Commonwealth's sovereign or Eleventh Amendment immunity, or as a pledge of its full faith and credit.

**3. PURCHASE OPTION**

At any time during the term of this Agreement, the Commonwealth may increase the quantity of items or features purchased under this Agreement by sending the Contractor a written Delivery Order or other Order, to that effect, signed by the Commonwealth's Contracts Manager. The purchase price shall be the lower of the unit cost identified in any executed Attachment or the Contractor's then-current, published price. The foregoing shall not apply to services provided to the Commonwealth at no charge. The delivery schedule for any items added by exercise of this option shall be set by mutual agreement.

Items not listed on any executed Attachment to this Agreement may be purchased under this Agreement if a duly authorized representative of both parties executes a Delivery Order that references this Agreement and specifies a mutually agreeable delivery schedule and price. However, any such purchases must be processed in accordance with the provisions of the Virginia Public Procurement Act prior to execution by the Commonwealth.

#### **4. OPERATIONAL RESTRICTIONS**

Contractor warrants that, except as specifically agreed in writing all Products may be operated at any time for the convenience of the Commonwealth (exclusive of time required for preventive maintenance, remedial maintenance and approved engineering changes). Without limiting the foregoing, Contractor warrants that there are no restrictions as to consecutive hours or length of personnel shifts. The Commonwealth may make the Products available to any Commonwealth agency or any other users under conditions where such use is supervised by the Commonwealth.

#### **5. INSPECTION/LATENT DEFECTS**

All Products are subject to inspection and test. Products that do not meet specifications may be rejected. Failure to reject, however, does not relieve the Contractor of liability for latent or hidden defects subsequently revealed when goods are used after acceptance has occurred. If latent defects are found at any time during the term of this Agreement, the Contractor shall repair or replace the defective goods. This remedy shall be in addition to any other remedies or obligations under this Agreement or provided by law.

#### **6. SITE PREPARATION**

At least thirty (30) days prior to the scheduled delivery date, the Contractor shall provide the Commonwealth with any environmental specifications necessary to ensure the proper and efficient operation of all Products. All such specifications shall be in writing.

The Commonwealth shall prepare the site at its own expense and in accordance with all such environmental specifications.

Ten days prior to the scheduled delivery date, the Contractor shall, if Contractor deems it necessary, inspect the site and notify the Commonwealth in writing of any environmental inadequacies. In the absence of notification to the contrary, the Commonwealth's environment shall be deemed acceptable to the Contractor.

Any delay or additional site preparation expense caused in whole or in part by erroneous or incomplete environmental specifications shall be the Contractor's responsibility.

#### **7. DELIVERY DATE**

The Contractor shall deliver the Products, ready for testing, by the delivery date specified in any executed Attachment or Order referencing the Agreement. If delivery of all Products is not completed within thirty (30) days after the scheduled delivery date, the Commonwealth may cancel the Agreement without further obligation. The Commonwealth may postpone any delivery date by notifying the Contractor at least seven (7) days prior to the delivery date. However, the delivery date shall not be postponed more than a total of thirty (30) days.

## **8. COMMENCEMENT OF ACCEPTANCE TESTING**

The Products shall be considered ready for testing when the Contractor provides the Commonwealth with the documentation of a successful system audit or diagnostic test performed at the site which demonstrates, to the satisfaction of the Commonwealth, that all Products meet the minimum design capabilities specified by Contractor. If the Contractor certifies that the Products are ready to begin acceptance testing prior to the scheduled delivery date, the Commonwealth, at its option, may elect to test the Products and change the delivery date accordingly.

## **9. REQUIRED PERFORMANCE LEVEL**

To qualify for acceptance, all Products must concurrently perform in accordance with the technical specifications and functional descriptions, as contained or referenced and in accordance with all published technical. The Commonwealth shall not pay any charges, either beforehand or retroactively, associated with the Contractor's requirement to achieve this performance level. If any Product does not meet the standard of performance during the initial thirty (30) consecutive days, the acceptance period shall continue on a day-to-day basis until all Products concurrently meet the standard of performance for thirty (30) consecutive days.

Should it be necessary, the Commonwealth may delay the start of the acceptance period, but such a delay shall not exceed thirty (30) consecutive days.

## **10. ACCEPTANCE**

The Products shall be deemed accepted on the first day after successful completion of the acceptance period. Upon request, the Commonwealth shall provide written confirmation of acceptance. If the standard of performance has not been met after ninety (90) calendar days have elapsed from the start of the acceptance period, the Commonwealth may require a replacement to be provided or may avail itself of the remedies for breach.

## **11. MOVEMENT OF EQUIPMENT**

a. Equipment may be moved from one Commonwealth location to another upon thirty (30) days written notice to the Contractor. Prior written notice shall not be required in case of emergency. Contractor shall continue to maintain the equipment as before, but if the Contractor has no facilities at the new location, the maintenance terms for the relocated equipment shall be equitably adjusted.

b. Shipment to the new installation site shall be at the Commonwealth's expense by any appropriate mode of transportation selected by the Commonwealth. Contractor shall supervise packing, unpacking, and relocation of the equipment. Commonwealth shall compensate the Contractor for this service if the Contractor charges substantially all of its commercial customers for such services. If such charges are assessed, they will be at the Contractor's then current standard rates.

c. Maintenance charges shall be suspended on the day that the equipment is dismantled in preparation for shipment and shall be reinstated when the Contractor certifies that the equipment is again ready for operational use. However, there shall be no suspension of charges if (a) the suspension period is less than 30 days or (b) the total charges to be suspended are less than \$500.00.

d. There shall be no relocation charge to the Commonwealth in the event of transfer of licensed Software Product(s) to another location and the licensed Software Product (s) is to be discontinued at the old location.

## 12. ADDITIONS AND SUBSTITUTIONS

The Commonwealth may add or substitute memory, tape drives, terminals, or other equipment from any source. In such event, the following conditions are applicable:

- a. Contractor will be notified at least thirty (30) days in advance of such additions or substitutions.
- b. The Contractor shall be relieved of the obligations specified elsewhere in this Agreement to correct Product malfunctions and defects and provide credits to the Commonwealth if, and only if, the malfunction or defect results solely and directly from the use of equipment not supplied by the Contractor.
- c. If the addition or substitution made by the Commonwealth increases the cost of maintenance, an equitable adjustment in the maintenance charge shall be made.
- d. Maintenance charges for equipment replaced by substitutions shall be discontinued effective upon deinstallation of the equipment to be replaced.

## 13. ENGINEERING CHANGES

**Contractor sponsored modifications and/or engineering changes shall be made with the consent of the State at no additional charge for a period of one (1) year from the date of installation. The State reserves the right at all times to schedule these Contractor sponsored modifications and/or changes to minimize the impact on the daily operations of the State.**

## 14. SUPPLIES

**Authorized charges do not include operational supplies (e.g. paper, tape, etc.) unless such supplies are specifically identified in the Schedule. All supplies used by the State shall conform to the Contractor's published specifications provided to State at time of equipment installation. The State reserves the right to acquire such supplies from any Contractor of its choice.**

## 15. CONTRACTOR'S MAINTENANCE POINT-OF-CONTACT

The Contractor shall provide the Commonwealth with designated points-of-contact and make arrangements to enable its maintenance representative to receive such notification or other continuous telephone coverage to permit the Commonwealth to make such contact.

## 16. MALFUNCTION REPORTS

The Contractor shall furnish a signed malfunction incident report to the purchasing agency's operations manager upon completion of each maintenance call. The report shall, at a minimum include, the following:

- (a) Date and time notified

- (b) Date and time of arrival
- (c) Type and model number(s) of machine(s)
- (d) Date and time when equipment is returned to operation
- (e) Description of malfunction
- (f) Signature of Contractor representative
- (g) Signature of Commonwealth representative

## **17. SOFTWARE UPGRADES**

The Commonwealth shall be entitled to receive any and all upgraded versions of the Software Product that Contractor may make available in the future including any third party Software Product provided by the Contractor under this Agreement. The maximum charge to the Commonwealth shall not exceed the difference between the price which the Commonwealth paid for the present version, and the lowest price at which the Contractor has sold or licensed the upgraded version.

## **18. DISPOSITION OF SOFTWARE**

Unless otherwise instructed by the Contractor, the State shall erase, destroy or otherwise render unusable the Software Product within thirty (30) days from the date of the Commonwealth's termination of the license. A letter certifying this destruction shall be sent to the Contractor as soon as this process is completed. The Commonwealth shall have the right to retain one copy for archival purposes.

## **19. COMMONWEALTH'S RIGHTS TO COMPUTER SOFTWARE**

Notwithstanding anything to the contrary in this Agreement, the Commonwealth shall have:

- a. Unlimited use of the Software Products on the machines for which it is acquired and on any replacement equipment;
- b. Use of such Software Products with a backup system if the system(s) for which it was acquired is for any reason, inoperative or during an emergency, or the performance of engineering changes in features or model;
- c. The right to use such Software Products at any Commonwealth installation to which the machine(s) may be transferred by the Commonwealth;
- d. The right to copy such software for safekeeping or backup purposes;
- e. The right to modify such Software Product or combine it with other programs or material at the Commonwealth's risk; and
- f. The Commonwealth shall have the right to reproduce any and all physical documentation supplied under the terms of this Agreement, provided, however, that such reproduction shall be for the sole use of the Commonwealth and shall be subject to the same restrictions or use and disclosure as are contained elsewhere in this Agreement.

Nothing contained herein shall be construed to restrict or limit the Commonwealth's rights to use any technical data which the Commonwealth may already possess or acquire under proper authorization from other sources.

## **20. CORRECTION OF ERRORS**

In the event Contractor cannot correct errors in the then-current, unaltered version (including updates) of the Software Products to keep such products in specified operating condition by responsive service, the Contractor shall replace the Product or provide a "work around" within ten (10) calendar days after notification that a software correction is required. In the event Contractor does not keep the Software Product(s) in specified operating condition in accordance with this Agreement, then the Commonwealth, at its sole option, shall have the right to return any or all of the software and related technical data and Contractor shall refund the total fees paid less a pro rata amount based on a sixty (60) month period from the date of acceptance.

## **21. SOURCE CODE**

If Contractor ceases to maintain experienced staff and resources necessary to provide required software maintenance to its customers in the ordinary course of business, or otherwise ceases to provide required maintenance services in the ordinary course of business, the Commonwealth shall be entitled to have, use and duplicate, for its own internal maintenance purposes, a copy of the source code and associated documentation for the affected software products. Until such time as a complete copy of such materials is provided to the Commonwealth, the Commonwealth shall have the exclusive right to possess all physical embodiments of such materials now existing or hereafter created by the Contractor or its successor in interest. The Commonwealth's rights under this Section shall survive the expiration or termination of this Agreement for a period of 20 years. The entire lease and royalty fee necessary to support the rights granted to the Commonwealth in this Section is included in the initial license fee payable with respect to the software product.

## **22. WARRANTY AGAINST SHUTDOWN DEVICES**

Contractor warrants that the Products provided under this Agreement shall not contain any lock, counter, CPU reference, virus, worm or other device capable of halting operations or erasing or altering data or programs. Contractor further warrants that neither the Contractor, nor its agents, employees or subcontractors shall insert any such device after execution of this Agreement.

## **23. DISASTER RECOVERY**

By executing this Agreement, Contractor hereby authorizes the Commonwealth to operate Contractor's licensed software products identified in this Agreement at other location(s) for purposes of disaster recovery and disaster recovery testing. In addition, Contractor recognizes that to prepare for such an event the Commonwealth must test the Contractor's software product (normally for a periods of two to three days, twice annually) at a disaster recovery vendor's Cold Site. The use of Contractor's software products by the Commonwealth, at such times and under such events will be in accordance with the terms and conditions of this Agreement. Contractor agrees that there shall be no additional charge to the Commonwealth when Contractor's software products are used during an actual disaster or for disaster recovery testing.

## **24. TRAINING SERVICES**

The Contractor shall train an adequate number of operating personnel to support the Commonwealth's use of the Products. Such training will be at a mutual agreeable Commonwealth location.

If any training Services are mutually agreed to, the particulars will be delineated here during any negotiations.

**25. CONSULTING SERVICES**

If any Consulting Services are mutually agreed to, the particulars will be delineated here during any negotiations.

**PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.**

**CONTRACTOR**

**BY:** \_\_\_\_\_

**NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**COMMONWEALTH OF VIRGINIA**

**BY:** \_\_\_\_\_

**NAME:** Jeff Davis

**TITLE:** Contracts Manager

**DATE:** \_\_\_\_\_



**ATTACHMENT "A"**  
**RFP 2003-025**

Attachment "A" is hereby incorporated into and made an integral part of Agreement Number VA \_\_\_\_\_ – \_\_\_\_\_ between XYZ and the Commonwealth of Virginia.

**CONTRACTORS DO NOT ADD ANY INFORMATION TO THIS ATTACHMENT "A" AT THIS TIME. THIS ATTACHMENT WILL BE COMPLETED DURING CONTRACT NEGOTIATIONS BETWEEN THE PARTIES TO THIS AGREEMENT.**

LISTING OF ALL PRODUCT PRICES

LISTING OF ALL PRODUCT MAINTENANCE PRICES

SHIP TO BILL TO ADDRESSES

DELIVERY SCHEDULE

AGENCY POINTS OF CONTACT

**ATTACHMENT "B"**  
**TO**  
**RFP 2003-025**  
**CERTIFICATION REGARDING LOBBYING**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- a. No Federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee or an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and Contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Organization: \_\_\_\_\_

Date: \_\_\_\_\_